

LHT
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA

ASHEVILLE, N.C.
2002 SEP 11 AM 10:37
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FILED
1:02mc54-T

Edward Wahler and Kathy Wahler)
Petitioner(s)) CIVIL # 1:02mc54-T
vs.) PETITION TO
The U.S. Internal Revenue Service and) QUASH SUMMONS
Asheville Jet; Accent on Design, Inc. aka Axiom Company;))
Yenom Group, Inc.; Roy E. Carter; America's Wholesale)
Lender; Full Spectrum Lending, Inc.; Life Bank;)
Bank One, NA)
Respondents)

1. This is an action under the Special Procedures for Third Party Summons Act, 26 USC §7609, to halt the above-named third-party recordkeeper from revealing Petitioner's private records to the Internal Revenue Service, and to quash the summons.
2. This court has jurisdiction over this action pursuant to 26 USC §7609(h), 28 USC §1346, and the First, Fourth, Fifth, Ninth and Tenth Amendments to the U.S. Constitution.
3. Petitioner is a citizen of the United States and entitled to the protection of its laws and/or respondent third-party recordkeeper is a resident of the district.
4. According to law, Petitioner, a person entitled to Notice of the Summons under 26 USC §7609(a), has the right to begin these proceedings to quash such summons not later than the 20th day after the day such notice is given, and should mail within 20 days from the date of Notice at the address shown on the summons by registered or certified mail a copy of this petition to (A) the third-party recordkeeper who received the summons, and (B) to the IRS Officer before whom the summoned person is to-appear at the address shown on the summons. The records sought by the summons relate to the Petitioner and are his personal records.
5. This Court should quash said summons, for the following reasons:
 - A. The IRS has classified Petitioner as a "Tax Protester" and has abandoned in an institutional sense the pursuit of a civil tax determination or collection purpose and has made an institutional commitment to make a referral to the Department of Justice for

prosecution as it would merely like to gather evidence to aid a prosecution. *US v. LaSalle National Bank*, 437 US 248, 98 S Ct 2357 (1978).

B. The Service, having abandoned the pursuit of Petitioner's civil tax liability, is attempting to use the summons for the impermissible purpose of gathering evidence solely for a criminal investigation, and is attempting to circumvent the traditional role of the grand jury as the principal tool of criminal investigation in our society. *US V. LaSalle National Bank, supra.*

C. The IRS has made a formal recommendation to the Department of Justice for prosecution of Petitioner or has made an informal determination and withheld the formal recommendation in order to use this civil process to circumvent the decision of the Federal Courts. The IRS has made a preliminary investigation into Petitioner's financial condition, since it has access to a tremendous amount of financial data on Petitioner and has thusly abandoned any hope of making any civil collection in this case, but is delaying in submitting a formal recommendation to the Department of Justice in order to gather additional evidence, to expand its criminal discovery rights, and to serve as an information gathering agency for the prosecuting attorney.

D. The summonses themselves indicates that this is a criminal investigation as much of the information sought has no bearing on a civil investigation but is that generally exclusively used for criminal prosecution. The Court should examine each type of document requested for a civil purpose. The Court, in examining each and every summons and all parts thereof, will discover that not all of the information sought contributes in some way to a civil inquiry. Even if the Court could discover a general civil purpose for the tax investigation, this would not terminate judicial inquiry into whether the summons (or parts thereof) issued during investigation exceeded the authority of the Internal Revenue Service. The court must focus on the purposes of each individual summons (or parts thereof) and not on the purpose of the investigation as a whole. If any one of many summonses or parts thereof were issued solely for a criminal investigation, that particular summons should be suppressed, even in the face of an overwhelmingly civil purpose for the investigation as a whole. The IRS simply would lack statutory authority to issue that particular summons. *US v Genser*, 595 F2d 146 (Third Circuit, 1979). The IRS has only that authority granted to it by Congress. The

Congress has given the IRS administrative summons powers in IRC §7603 and §7604 to be used only in civil cases and has not yet given this administrative agency mandatory criminal investigatory powers. Therefore, the IRS simply does not have the authority to summons those particular third-party records which would be used only in criminal prosecutions.

E. The information in the possession of the Respondent third-party recordkeeper is of a private nature and was not intended to be given to parties not authorized by Petitioner. Furnishing such personal and private information about Petitioner to the IRS or any other governmental body without Petitioner's consent is a violation of his person, his privacy, his Constitutional rights, and his natural rights, which should and ought to be protected by the government.

F. The IRS summonses are not issued in good faith, as the information sought by the individual summonses are too broad and too sweeping in detail to be used by the IRS only to prove the actual existence of a valid civil tax determination or for a collection purpose. Most of the items sought by the summons are needed only by the Department of Justice to aid in a criminal prosecution.

G. The IRS has failed to meet the procedural requirement of the summons authority, including the required provisions of 26 USC §7602, §7603, §7609, etc. The summons is patently defective on its face, filled out incorrectly by an unauthorized person, and served incorrectly for an improper purpose. In addition, it violated the notice and hearing requirements. The agents have failed to comply with the mandatory procedures in 26 USC §7605(c) and have not secured the proper authorization, nor given the proper notice.

H. The summonses were not issued in good faith. They were not conducted pursuant to a legitimate purpose. They were not relevant to any lawful purpose. The information they seek is already within the possession of the Internal Revenue Commissioner. The required administrative steps have not been followed. The summonses are an abuse of the administrative process. They were issued for the improper purpose of harassing and pressuring the Petitioner. *U.S v Powell*, 379 US 78, 85 S Ct 248 (1964).

I. IRS Manual Supplement 9G-93, the procedural guideline for prosecuting those persons classified by the IRS as "tax protesters," removes any discretion from the individual agents assigned to the case. MS 9G-93, IRM 9383.6 and other IRS procedures

on persons similarly labeled as Petitioner set forth a policy whereby the cases are totally criminal *ab initio*, to the extent that individual agents and the IRS itself have no discretion or authority to compromise whatsoever in these cases. This manual is, by itself, the institutional commitment to prosecute.

6. The government alleges that one opposing the summonses bears the burden of disproving the actual existence of a valid civil tax determination or collection purpose. To meet said burden, Petitioner needs adequate pre-hearing discovery. Petitioner, given sufficient discovery, can prove:
 - A. No further existence of a continuing civil purpose.
 - B. A pre-existing institutional commitment to prosecute.
 - C. The failure of the summons to advance a civil purpose.
 - D. Improper purpose, political harassment, etc.
7. In his affidavit and Summary of Authorities, to be filed henceforth, Petitioner will enumerate the government's actions, which speak louder than words and show that the true nature of this investigation and the purpose of the government is to circumvent the traditional role of the grand jury and the other Constitutional protections of the Petitioner as guaranteed in the Bill of Rights. IRC §7609 provided Petitioner, as "a person who is entitled to notice of a summons", the right to petition to quash a summons. Obviously, the Congress meant for the suit to be meaningful, with adequate pre-hearing discovery, plus a real evidentiary hearing with government witnesses testifying under oath.
8. IRC §7603 provides that the summons be "attested," and this is mandatory. The IRS summons in this case is not attested, or not attested properly, because *inter alia* it is neither notarized nor properly worded.

Wherefore, Petitioner incorporates herein by reference his affidavit, memorandum of law and supplemental motions, and requests that the court quash the IRS summonses directed to the third-party recordkeeper, and award Petitioner's cost, fee and other just relief.

Date: September 10, 2002

Edward Wahler

Edward Wahler

Kathy Wahler

Kathy Wahler
Petitioner, *pro se*

Address: 1120 Cane Creek Road

Fletcher, NC 28732
828-684-3365



Summons

In the matter of Edward W. Wahler dba Wahler Aviation, Inc. and/or Ten Forward Corporation

Internal Revenue Service (Division): Small Business / Self-Employed Division

Industry/Area (name or number): Services - Business and Professional

Periods: 1998, 1999, and 2000 (1-1-1998 through 12-31-2000)

The Commissioner of Internal Revenue

To: Asheville Jet

At: P.O. Box 1209 Fletcher, NC 28732

You are hereby summoned and required to appear before Lisa S. Ray - Revenue Agent

an officer of the Internal Revenue Service. To give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability. Or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the Internal Revenue laws concerning the person identified above for the periods shown.

Any information of financial transactions, contracts, sales incoices, and/or payment documents behind any and all transactions involving Edward Wahler, Kathy Wahler, Wahler Aviation, Inc., and/or Ten Forward Corporation. This should include for example checks paid to any of the above individuals, with explanations of business dealings and documentation or other back-up.

Do not write in this space

Business address and telephone number of IRS officer before whom you are to appear:

151 Patton Avenue, Room 167, Asheville, NC 28801-5003 (828) 271-4721, ext. 135

Place and time for appearance at 151 Patton Avenue, Room 167 Asheville, NC 28801



Department of the Treasury
Internal Revenue Service

www.irs.gov

Form 2039 (Rev. 05-2001)
Catalog Number 21405J

on the 27th day of September, 2002 at 9:00 o'clock a. m.

Issued under authority of the Internal Revenue Code this 29th day of August, 2002.

Signature of issuing officer

Signature of approving officer (if applicable)

Lisa S. Ray
Revenue Agent
Title

Soupy Mays
Title

Part C — to be given to noticee



Summons

In the matter of Edward W. Wahler dba Wahler Aviation, Inc. and/or Ten Forward Corporation

Internal Revenue Service (Division): Small Business / Self-Employed Division

Industry/Area (name or number): Services - Business and Professional

Periods: 1998, 1999, and 2000 (1-1-1998 through 12-31-2000)

The Commissioner of Internal Revenue

To: Accent on Design, Inc. aka Axiom Company

At: 139 Bane Lane Mooresville, NC 28115

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an officer of the Internal Revenue Service. To give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability. Or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the Internal Revenue laws concerning the person identified above for the periods shown.

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Industry/Area (name or number): Services - Business and Professional

Periods: 1998, 1999, and 2000 (1-1-1998 through 12-31-2000)

The Commissioner of Internal Revenue

To: Bank One, NA, Legal OH1-0152

At: 1111 Polaris Parkway Columbus, Ohio 43240

You are hereby summoned and required to appear before Lisa S. Ray - Revenue Agent

an officer of the Internal Revenue Service. To give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability. Or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the Internal Revenue laws concerning the person identified above for the periods shown.

All documents and records in your possession or control reflecting the receipt of income to for the years 1998 through 2000, including, but not limited to:

1. All monthly statements, canceled checks, deposit items, and deposit slips for all checking accounts maintained during the periods listed, whether open or closed.
2. Record of activity of all savings accounts, including deposits and withdrawals, maintained during the periods listed, whether open or closed.
3. Record of any time certificates maintained during the periods listed, whether open or closed.
4. Copies of any applications for loans or mortgages made during the periods listed, including net worth statements.
5. Proceeds checks and repayment ledgers for all loans or mortgages maintained during the above periods, whether open or closed.
6. Signature cards for all accounts.
7. Rental agreement and visitation log for any safety deposit box maintained during the above periods.
8. Copies of monthly statements for any credit cards maintained with the bank during the above periods.
9. A copy of all checks deposited into the taxpayer's bank account.
10. Escrow records including, but not limited to, purchase agreements, sales agreements, loan amortization schedules, repayment ledgers, checks, disbursements, copy of checks deposited into escrow account.

The above information is requested for all accounts whether maintained separately or jointly, and for accounts maintained under any other names over which any of the above named individuals maintained signature authority

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Internal Revenue Service (Division): Small Business / Self-Employed Division

Industry/Area (name or number): Services - Business and Professional

Periods: 1998, 1999, and 2000 (1-1-1998 through 12-31-2000)

The Commissioner of Internal Revenue

To: America's Wholesale Lender

At: 4500 Park Granada, Calabasas, CA 91302-1613

You are hereby summoned and required to appear before Lisa S. Ray - Revenue Agent

an officer of the Internal Revenue Service. To give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability. Or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the Internal Revenue laws concerning the person identified above for the periods shown.

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3. Proceeds checks and repayment ledgers for all loans or mortgages maintained during the above periods, whether open or closed.
4. Signature cards for all accounts.
5. Copies of monthly statements for any credit cards maintained with the bank during the above periods.
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Internal Revenue Service

www.irs.gov

Form 2039 (Rev. 05-2001)
Catalog Number 21405J

on the 04 day of October, 2002 at 9:00 o'clock a. m.
Issued under authority of the Internal Revenue Code this 03 day of September, 2002.

Signature of issuing officer

Signature of approving officer (if applicable)

Lisa S. Ray
Revenue Agent
Title
Jerry M. Miller
Title
George Manase
Title

Part C — to be given to noticee



Summons

In the matter of Edward W. Wahler dba Wahler Aviation, Inc. and/or Ten Forward Corporation
Internal Revenue Service (Division): Small Business / Self-Employed Division
Industry/Area (name or number): Services - Business and Professional
Periods: 1998, 1999, and 2000 (1-1-1998 through 12-31-2000)

The Commissioner of Internal Revenue

To: Full Spectrum Lending, Inc.
At: 4500 Park Granada, Calabasas, CA 91302-1613

You are hereby summoned and required to appear before Lisa S. Ray - Revenue Agent
an officer of the Internal Revenue Service. To give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability. Or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the Internal Revenue laws concerning the person identified above for the periods shown.

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Signature of approving officer (if applicable)

Revenue Agent

Title

Recey Manager

Title

Part C — to be given to noticee



Summons

In the matter of Kathy R. Wahler dba Wahler Aviation, Inc. and/or Ten Forward Corporation

Internal Revenue Service (Division): Small Business / Self-Employed Division

Industry/Area (name or number): Services - Business and Professional

Periods: 1998, 1999, and 2000 (1-1-1998 through 12-31-2000)

The Commissioner of Internal Revenue

To: Full Spectrum Lending, Inc.

At: 4500 Park Granada, Calabasas, CA 91302-1613

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an officer of the Internal Revenue Service. To give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability. Or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the Internal Revenue laws concerning the person identified above for the periods shown.

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Signature of approving officer (if applicable)

Lisa S. Ray Revenue Agent

Title

Jerry M. Moran

Title

Part C — to be given to noticee



Summons

In the matter of Kathy R. Wahler dba Wahler Aviation, Inc. and/or Ten Forward Corporation

Internal Revenue Service (Division): Small Business / Self-Employed Division

Industry/Area (name or number): Services - Business and Professional

Periods: 1998, 1999, and 2000 (1-1-1998 through 12-31-2000)

The Commissioner of Internal Revenue

To: Life Bank

At: 10540 Magnolia Avenue #C, Riverside, CA 92505

You are hereby summoned and required to appear before Lisa S. Ray - Revenue Agent

an officer of the Internal Revenue Service. To give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability. Or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the Internal Revenue laws concerning the person identified above for the periods shown.

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Industry/Area (name or number): Services - Business and Professional

Periods: 1998, 1999, and 2000 (1-1-1998 through 12-31-2000)

The Commissioner of Internal Revenue

To: Roy E. Carter

At: Rt. 1 Box 388 Fletcher, NC 28732

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Industry/Area (name or number): Services - Business and Professional

Periods: 1998, 1999, and 2000 (1-1-1998 through 12-31-2000)

The Commissioner of Internal Revenue

To: Yenom Group, Inc.

At: 1554 SW St. Andrews Drive Palm City, FL 34990

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an officer of the Internal Revenue Service. To give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability. Or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the Internal Revenue laws concerning the person identified above for the periods shown.

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